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12 Chapter 11 Trustee

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

15 In re

16 SK Foods, LP, a California limited partnership,

17 Debtor.

18
19 Bradley D. Sharp, Chapter 11 Trustee of SK
20 Foods, L.P., a California limited partnership,

21 Plaintiff,

22 vs.

23 Scott Salyer as trustee of the Scott Salyer
24 Revocable Trust, SK PM Corp., SK Foods, LLC,
25 SKF Canning, LLC, Scott Salyer Revocable
26 Trust, Blackstone Ranch Corporation, Monterey
27 Peninsula Farms, LLC, Salyer Management
28 Company, LLC, SK Farms Services, LLC, SK
Frozen Foods, LLC, SS Farms LLC, SSC
Farming, LLC, SSC Farms I, LLC, SSC Farms
II, LLC, SSC Farms III, LLC ,

Defendants.

Case No.: 09-29162

Chapter 11

A.P. No.

ADVERSARY COMPLAINT FOR
(1) AVOIDANCE OF PREFERENTIAL
PAYMENTS PURSUANT TO 11
U.S.C. § 547
(2) AVOIDANCE OF FRAUDULENT
TRANSFERS PURSUANT TO 11
U.S.C. § 548
(3) AVOIDANCE OF FRAUDULENT
TRANSFERS PURSUANT TO 11
U.S.C. §§ 544(B) AND 550(A) AND
CALIFORNIA CIVIL CODE §§
3439.07, 3439.04 AND 3439.05
(4) SUBSTANTIVE CONSOLIDATION
(5) DECLARATORY RELIEF
(6) RECOVERY OF FRAUDULENT
TRANSFERS; AND
(7) TURNOVER OF PROPERTY OF
THE ESTATE

Bradley D. Sharp, the duly appointed and acting Chapter 11 Trustee (the "Trustee") in the cases of SK Foods, L.P., a California limited partnership ("SK Foods" or "Debtor"), hereby files this Adversary Complaint, and in support thereof, avers as follows:

INTRODUCTION

This adversary proceeding seeks to substantively consolidate and otherwise recover for the benefit of the Debtor's estate assets transferred to or otherwise in the possession of the Defendants.¹ The Debtor created, funded and operated many of the Defendants to such an extent that their financial affairs and identities are entangled with those of the Debtor. The Defendants have little if any operations outside of their relationships with the Debtor, never dealt with the Debtor at arms-length, relied on the Debtor to create, store and maintain their records and to provide management and administrative services, never observed corporate formalities separate and apart from the Debtor, and generally existed solely to benefit the operations of the Debtor and to shelter assets from creditors of the various Defendants. Funds were transferred between Debtor and Defendants whenever one entity needed funds or whenever it suited the tax planning purposes of Scott Salyer, the ultimate owner of all Defendants. A review of SK Foods' general ledger alone reveals net transactions to the named defendants and certain other related parties of over \$200 million. *See* Exhibit A, attached hereto. At present, it is not reasonably possible to reverse all these transactions and ascertain which entity owns which assets without depleting all available assets. There is such an identity of assets and interests that Debtor is rightfully deemed the owner of all assets of the Defendants, and the Defendants should be substantively consolidated with the Debtor's estate so that creditors of all these various entities may be treated equitably. Alternatively, the many transfers from Debtor to Defendants should be avoided and those assets returned to the Debtor.

¹ In a separate proceeding, Debtor will seek to substantively consolidate with the Debtor's Estate the Estate of RHM Industrial Specialty Foods, Inc., a California corporation doing business as Colusa County Canning Co. ("RHM").

THE PARTIES

1
2 1. Plaintiff Bradley D. Sharp is the duly appointed and acting Chapter 11 Trustee in
3 the cases of SK Foods, L.P., a California limited partnership ("SK Foods" or "Debtor").

4 2. SK Foods is a California limited partnership with a principal office at 1175 19th
5 Avenue, Lemoore, California. Its registered agent is Scott Salyer.

6 3. Scott Salyer ("Salyer") is an individual residing in the State of California. The
7 Trustee is informed and believes and thereon alleges that Scott Salyer is trustee of Scott Salyer
8 Revocable Trust.

9 4. The Trustee is informed and believes and thereon alleges that the Scott Salyer
10 Revocable Trust ("SSR Trust") is a California trust whose beneficiary is Salyer.

11 5. The Trustee is informed and believes and thereon alleges that SK PM Corporation
12 ("SKPM") is a California corporation with is principal place of business located at 21 Lower
13 Ragsdale Drive, Monterey, California. Its registered agent is Mark McCormick.

14 6. The Trustee is informed and believes and thereon alleges that SKF Canning, LLC
15 ("SKF Canning") is a Nevada limited liability company.

16 7. The Trustee is informed and believes and thereon alleges that SK Foods, LLC is a
17 Nevada limited liability company.

18 8. Defendants identified in paragraphs 3 through 7 are collectively referred to herein
19 as the "Owner Defendants."

20 9. Blackstone Ranch Corporation ("Blackstone") is a California corporation with a
21 principal place of business at 1175 S. 19th Avenue, Lemoore, California. Its registered agent is
22 Mark McCormick.

23 10. SS Farms LLC ("SS Farms") is a California limited liability company with a
24 principal address of 1175 19th Avenue, Lemoore, California. Its registered agent is Scott Salyer.

25 11. SSC Farming, LLC ("SSC Farming") is a California limited liability company
26 with a principal address of 1175 S. 19th Avenue, Lemoore, California.

12. SSC Farms I, LLC ("SSC I") is a California limited liability company with a principal address of 200 Sky Park Drive, Monterey, California. Its registered agent is Scott Salyer.

13. SSC Farms II, LLC ("SSC II") is a California limited liability company with a principal address of 200 Sky Park Drive, Monterey, California. Its registered agent is Scott Salyer.

14. SSC Farms III, LLC ("SSC III") is a California limited liability company with a principal address of 200 Sky Park Drive, Monterey, California. Its registered agent is Scott Salyer.

15. The Trustee is informed and believes and thereon alleges that Monterey Peninsula Farms, LLC ("Monterey") is a California limited liability company.

16. Salyer Management Company, LLC ("SMC") is a California limited liability company with a principal place of business at 200 Sky Park Drive, Monterey, California. Its registered agent is Scott Salyer.

17. SK Farms Services, LLC ("SK Farms Services") is a California limited liability company with a principal place of business at 200 Sky Park Drive, Monterey, California. Its registered agent is Mark McCormick.

18. SK Frozen Foods, LLC ("SK Frozen Foods") is a California limited liability company with is principal place of business located at 200 Sky Park Drive, Monterey, California. Its registered agent is Mark McCormick.

19. Defendants identified in paragraphs 9 through 18 are collectively referred to herein as the "Affiliated Defendants".

JURISDICTION AND VENUE

20. On or about May 7, 2009, the Debtor filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101, *et. seq.* (the "Bankruptcy Code."). An involuntary petition was filed with respect to the Debtor on or about May 5, 2009 ("Petition Date").

21. This Court has jurisdiction over this adversary proceeding under 28 U.S.C. §§ 1334 and 157, and Rule 7001(7) and (9) of the Federal Rules of Bankruptcy Procedure.

22. This is a core proceeding under 28 U.S.C. §§ 1408 and 1409.

23. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND²

Common ownership, management and control

24. SK Foods is owned 45.55% directly by the SSR Trust. The other 54.45% is owned by SKPM, which in turn is owned 100% by the SSR Trust.

25. RHM is owned 60% by SKF Canning, which in turn is owned 100% by the SSR Trust. Two trusts set up for Mr. Salyer's daughters (the Stephanie Ann Salyer 2007 Trust ("SAS 2007 Trust") and the Caroline Gazelle Salyer 2007 Trust ("CGS 2007 Trust")) own 20% each of RHM as well.

26. Mr. Salyer and his daughters, or trusts for which they are beneficiaries, own, directly or indirectly in various combinations, 100% of each of the Owner Defendants and the Affiliated Defendants.

27. Blackstone, SKF Canning and SKPM are owned 100% by the SSR Trust.

28. SK Foods, LLC is owned 45.55% directly by the SSR Trust, and 54.45% by SKPM, which in turn is owned 100% by the SSR Trust.

29. SS Farms and SSC Farming are each owned 60% by the SSR Trust, with the Stephanie Ann Salyer Trust ("SAS Trust") and the Caroline Gazelle Salyer Trust ("CGS Trust") each owning 20% as well.

30. SSC I and SSC II are owned 50% by the SSR Trust and 50% by the SAS Trust.

² The allegations set forth herein are based on the Trustee's investigation and review of SK Foods' documents in compliance with all court orders currently in effect. The Trustee reserves the right to amend or supplement these allegations as appropriate as additional information becomes available.

1 31. SSC III is owned 33.34% by the SSR Trust and 33.33% each by Stefanie Salyer
2 and Caroline Salyer. Monterey is owned 61.52% by SSC Farming, 10.49% by SS Farms and
3 13.99% by SSC I, and 13.99% by SSC II.

4 32. SK Frozen Foods and SMC are each owned 60% by the SSR Trust, and 20% each
5 by the SAS 2007 Trust and the CGS 2007 Trust.

6 33. SK Farms Services is owned 100% by SMC, which as set forth above, is owned
7 by the SSR Trust, the SAS 2007 Trust and the CGS 2007 Trust.

8 34. At all relevant periods Scott Salyer, by or through entities he owned and
9 controlled, controlled, operated and managed the Debtor and each of the Owner Defendants and
10 Affiliated Defendants.

11 35. Salyer is the Trustee and beneficiary of the SSR Trust.

12 36. Salyer was, at all relevant times, the President/Chief Executive of SKPM, the
13 general partner of SK Foods.

14 37. Salyer has represented himself at various points in time as Chief Executive
15 Officer, Director and President of SK Foods. He has also signed documents on behalf of SK
16 Foods in his capacity as President of SKPM, its general partner.

17 38. Salyer was at all relevant times Chief Executive Officer of RHM.

18 39. Upon information and belief, Salyer was at all relevant times a principal officer of
19 SKPM.

20 40. Salyer controls the Owner Defendants through his direct or indirect ownership
21 interests and his positions as an officer, manager, director or trustee of the Owner Defendants.

22 41. Upon information and belief, Salyer is the Manager of, or has ultimate control
23 over, SKF Canning, SK Foods, LLC, Blackstone, SS Farms, SSC Farming, SSC I, SSC II, SSC
24 III, SK Frozen Foods, SMC, SK Farms Services and Monterey.

25 42. Upon information and belief, Salyer controlled each of the Affiliated Defendants
26 directly or indirectly by virtue of his ownership and/or management of the various trusts and
27 companies named as Defendants. He directly interacted with officers and managers and gave
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1 instructions to them concerning operation and management of the Debtor and the Defendants,
2 and those officers and managers followed Salyer's instructions.

3 **Single Enterprise**

4 43. The Debtor and the Defendants at all relevant times formed a cohesive single
5 enterprise that together enabled the Debtor to grow, harvest, process, ready for shipment and ship
6 tomatoes, other crops and products.

7 44. Although each Affiliated Defendant claims separate corporate or other separate
8 and distinct legal existence and nominally hold title to separate assets, in reality, each Affiliated
9 Defendant is part of the Debtor's business and operates as part of a coordinated single enterprise.

10 45. SSC Farming, SSC I, SSC II and SSC III, and for a time Blackstone, held title to
11 certain land and grew tomatoes or other crops on that land. SS Farms would provide farming
12 services, including harvesting, to these other entities. SS Farms would then provide the crops to
13 SK Foods or RHM for processing.

14 46. In the course of processing tomatoes and other crops, SK Foods and RHM would
15 discharge wastewater on land owned by SSC Farming, SSC I and SSC II. SK Foods also utilized
16 wood bins nominally owned by the SSR Trust.

17 47. SK Foods utilized assets and services of other entities owned and controlled by
18 Salyer for various transportation purposes, including but not limited to SKF Aviation, LLC and
19 CSSS, LP d/b/a Central Valley Shippers.

20 48. SS Farms and Blackstone also held title to harvesters, vehicles and other
21 equipment which they made available for use by each other and SK Foods at the discretion of
22 employees of SK Foods. Blackstone also served as a conduit through which funds of SK Foods
23 and/or the Affiliated Defendants flowed to other Defendants, as well as a source of funds for
24 Salyer personally.

25 49. SMC was formed to receive "management fees" from SS Farms and other
26 entities, allegedly for services provided by SK Foods' employees. In reality, SMC served as a
27 conduit through which funds of SK Foods and/or the Affiliated Defendants flowed to Salyer
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1 and/or one of Salyer's ex-wives to satisfy Salyer's personal obligations under a divorce
2 settlement.

3 50. Monterey was formed for the purposes of pooling available assets of other
4 Affiliated Defendants, including SSC Farming, SSC I and SSC II, as well as other entities in
5 which Salyer had an interest. Upon information and belief, Salyer and the Owner Defendants
6 sought to pool assets within Monterey in order to obtain additional financing against the pooled
7 assets. Upon information and belief, but for aggregating the assets in a separate entity, the
8 entities holding nominal title to the assets had insufficient equity or income with which to obtain
9 financing.

10 51. SK Frozen Foods was formed in order to flash freeze vegetables. The Owner
11 Defendants intended SK Frozen Foods to be operated and funded by another Salyer-owned entity
12 (Salyer American Fresh Foods) (which is currently in receivership).

13 52. SK Farms Services was formed in December 2007 to centralize purchasing for
14 Debtor and the other Defendants. This entity never had any independent operations or assets.

15 53. SK Foods also owned international operations. These operations took place
16 mainly in New Zealand, Australia and Japan, and the entities involved in these operations are
17 hereinafter referred to as the "Foreign Entities."

18 54. From a financial perspective, the Defendants and the Foreign Entities were
19 entirely dependent upon continued financing from SK Foods to remain operating.

20 55. Each year before the start of the new packing season, generally in or about May,
21 Salyer and his management team would hold a "pre-pack meeting." At this meeting the
22 management of SK Foods met to discuss all or substantially all aspects of the season – planting,
23 growing, harvesting, processing, and selling. The pre-pack meeting necessarily required the
24 attendance and participation of the Defendants and their management teams, to the extent there
25 was any distinction. Attendees included individuals responsible for management of each of
26 those components, and the purpose of the meeting was to coordinate operations for the success of
27 the Debtor. The attendees included (among others) Salyer and the individuals responsible for
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1 agriculture operations and sales. The attendees generally discussed (among other things) what
2 customers wanted, what would be grown and packed, what would be processed, and costs.

3 56. A written pack plan typically was created and distributed to facilitate coordination
4 and thus the operation as a single enterprise. The pack plan included spreadsheets that identified
5 the anticipated crop yield, processing cost estimates, quantity and quality of customer contracts
6 and demands, and market prices for finished product.

7 57. During the season, the management teams and individuals responsible for
8 growing, harvesting, processing, and selling would coordinate their effort. For example, the
9 executive who oversaw operation of SK Foods' and RHM's processing plants would coordinate
10 with the executive responsible for agricultural operations. Both were employees of SK Foods,
11 but the executive responsible for agricultural operations also had responsibility for certain of the
12 defendants that owned and farmed the land used for produce processed by SK Foods and RHM.

13 58. SK Foods' Vice President of Ag Operations (Rick Emmett) had the authority to,
14 and did, direct, control, deploy and utilize all assets necessary to effect the pack each season
15 regardless of the entity that nominally held title to the particular assets.

16 59. Employees of SK Foods could access land and use equipment nominally owned
17 by any particular Affiliated Defendant at their discretion without seeking or needing permission.

18 60. Salyer and others in management of SK Foods and the Affiliated Defendants held
19 themselves out to the public and their creditors as a single enterprise. Salyer and others in
20 management of SK Foods and the Affiliated Defendants sometimes referred to SK Foods and the
21 Defendants as "SK Foods Group". The Debtor's marketing brochures described SK Foods
22 Group as "one of the world's leading international growers and processors of vegetable
23 products," confirming that the Debtor and the Defendants operated as a single enterprise.

24 61. Salyer and certain management employees working for Salyer also have referred
25 to the various Salyer-owned Defendants, including the Owner Defendants, the Affiliated
26 Defendants and others, as "Salyer Enterprises," confirming the common ownership and control
27 of the various entities.

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62. In 2007, in negotiations with its lenders, SK Foods proposed to include many of the Defendants as co-obligors under the loans and lines of credit it was seeking to obtain. These Defendants included Blackstone, SS Farms, SSC Farming, SKPM, SKF Canning and RHM, and other parties included were RHM, SKF Aviation, LLC and CSSS, LP.

63. The number of related entities and the relationships between and among the Defendants has caused confusion as to on whose behalf certain acts have been taken.

64. Salyer purposely blurred the legal distinctions among the Debtor, the Owner Defendants and Affiliated Defendants in order to advance his personal objectives. He failed to maintain any separation of legal representation between and among the Debtor, the Owner Defendants and Affiliated Defendants and allowed sophisticated legal counsel to access confidential information of one entity to be used for the benefit of other entities and himself personally.

No independent operations

65. Apart from supporting the Debtor's processing business, the Affiliated Defendants have little or no independent operations and could not exist as a going concern but for the financial and operational assistance provided by the Debtor.

66. SSC I and SSC II had two sources of revenue. SK Foods paid to discharge wastewater onto land to which they hold title (but which as set forth below was provided to them by SK Foods for no consideration). They also grew crops which they sold exclusively to SK Foods. SSC I and SSC II have no further agricultural operations since the sale of the Debtor's operating assets—their entire business was limited to growing crops for SK Foods and receiving discharged wastewater from SK Foods.

67. Other than a minor quantity, all of SSC Farming's crops were sold to SK Foods.

68. Ninety percent or more of crops harvested by SS Farms were processed by SK Foods.

69. SS Farms performed agricultural services almost entirely for Debtor and other Defendants, such as SSC Farming and Blackstone.

70. RHM was a contract processor for SK Foods, and had no other operations.

1 71. SKF Aviation, LLC obtained 100% of its operating revenue exclusively from SK
2 Foods and related parties. It had no revenue generated from any third-party source. Strictly for
3 accounting purposes, SKF Aviation's operating costs were intended to be allocated between SK
4 Foods, RHM, SS Farms and Cedenco (one of the Foreign Entities), although SK Foods
5 historically funded substantially all costs and expenses of ownership and operation. Although
6 SKF Aviation provided some aviation transportation to SK Foods employees for business related
7 travel, the amount of such services were grossly in disproportion to the amount of funding
8 provided by SK Foods. Substantially all of CSSS, LP's revenues are derived from services
9 rendered to SK Foods.

10 72. In fact, many of the Affiliated Defendants did not have any employees. For
11 instance, Blackstone and SSC Farming did not have any employees. The few CSSS and SS
12 Farms employees reported to SK Foods managers.

13 73. Upon information and belief, all of the other Affiliated Defendants had limited, if
14 any, operations or interactions outside the SK Foods family of companies.

15 **Affiliated Defendants were never capitalized or operated for profit**

16 74. Many, if not all, of the Affiliated Defendants were never capitalized from funds
17 outside the enterprise. The Debtor directly and indirectly provided "intercompany" transfers,
18 alleged "prepaid expenses" or putative loans in order to capitalize the Affiliated Defendants.

19 75. For example, the members of SSC I and SSC II never provided any capital in
20 exchange for their membership interests in these limited liability companies. SSC I and SSC II's
21 only assets are the land to which they hold title and the "financial arrangements", e.g. purported
22 contracts, receivables and "prepaid expenses", with SK Foods and other Salyer-related entities.

23 76. SSC I and SSC II have never operated at a profit, and upon information and
24 belief, were never intended to operate at a profit. In each year of their existence, their expenses
25 were significantly more than their revenue.

26 77. On information and belief, SK Foods directly or indirectly provided all capital to
27 finance CSSS. CSSS provided shipping services to SK Foods for transportation of SK Food's
28 product. CSSS's only asset was or is a leased railroad spur. CSSS hired haulers as independent

1 contractors. On information and belief, Salyer's goal for CSSS was to generate only enough
2 revenue to pay the premium on a life insurance policy under which he was covered so the cost
3 would not come out of his own pocket. Since the sale of the Debtors' operating assets, CSSS has
4 ceased all operations.

5 78. SK Foods provided all the funds to capitalize SK Frozen Foods. SK Frozen
6 Foods' putative owners, SSR Trust, CGS 2007 Trust, and SAS 2007 Trust, did not provide any
7 capital in exchange for their membership interests. SK Frozen Foods never had any officers or
8 employees and is a mere shell entity. SK Foods provided SK Frozen Foods funds to lease
9 premises ("Monterey Fish Company facility") in order to flash freeze broccoli, cauliflower, and
10 peppers. Another Salyer entity that currently is in receivership (Salyer American Fresh Foods
11 ("SAFF")) was to operate and fund SK Frozen Foods. Like SK Frozen Foods, SAFF lacked the
12 funds to purchase equipment necessary to flash freeze produce and to retrofit the Monterey Fish
13 Company facility to operate the business. As a result, SK Foods also provided the funds to
14 purchase the flash freeze equipment and paid approximately \$1 million to retrofit the facility.

15 79. Despite SK Foods investing approximately \$2 million into the frozen vegetable
16 business, the business was abandoned before operations began. Sometime in 2009, assets were
17 transferred from SK Foods to SK Frozen Foods. SK Frozen Foods sold the assets in May or
18 June 2009 to John Bryce, a former employee of SAFF. On information and belief, Salyer or
19 another company controlled by him retained the proceeds, and did not repay SK Foods.

20 80. SK Foods provided \$500,000 to SKF Aviation to help fund the \$1.5 million
21 acquisition cost of an aircraft. SK Foods also guaranteed the loan used to finance the purchase
22 price of another aircraft.

23 81. SK Foods also guaranteed leases issued to SS Farms.

24 82. Scott Salyer created Monterey in late 2008 or early 2009 to receive assets of the
25 SSC Entities (SSC Farming, SSC I, SSC II and SSC III) because of difficulties he had in
26 obtaining financing for the SSC Entities and for Salyer American Fresh Foods ("SAFF"). As
27 stand-alone entities these companies were not credit worthy without financial backing from SK
28 Foods. SAFF was unprofitable eight out of the ten years it was in operation and presently is in

1 receivership. On information and belief, Salyer sought to pool the assets of SAFF and the SSC
2 Entities in order to obtain additional financing. Through intercompany loans, Monterey could
3 then provide needed financing to SAFF, which it could not otherwise obtain.

4 83. Upon information and belief, SKPM does not have any business operations. Any
5 corporate officers have resigned.

6 84. SMC was formed to receive purported "management fees" from SS Farms and
7 other entities for services provided by SK Foods' employees. In reality, the purpose of SMC was
8 a conduit for money from operations of the single enterprise to pay one of Scott Salyer's ex-
9 wives consistent with the terms of a divorce settlement. On information and belief, Salyer's
10 obligation to his ex-wife is approximately \$50,000 per month and an annual \$1 million payment.
11 SMC did not provide reasonably equivalent value for the monies it received; rather, any services
12 were provided by employees of SK Foods.

13 85. Upon information and belief, the other Affiliated Defendants similarly were
14 undercapitalized or not capitalized at all.

15 86. Upon information and belief, many of the Affiliated Defendants were not
16 profitable and were never intended to operate in a fashion that would generate a profit.

17 **Failure to Adhere to Corporate Formalities**

18 87. Upon information and belief, the Owner Defendants and the Affiliated
19 Defendants did not follow or adhere to corporate formalities.

20 88. One of the few "board of directors" meeting for any of the entities was held on
21 December 14, 2007. The meeting minutes are entitled "SK Foods Entities" and states "The
22 regular meeting of the SK Foods company including all SK Foods entities was called to
23 order . . ."

24 89. At this December 14, 2007 meeting, Salyer and several other members of
25 management discussed the possible "collapse" of Blackstone and the "collapse" of RHM. The
26 managers in attendance also heard a presentation regarding the finances of "Central Valley
27 Shippers d/b/a SARS," and approved the "collapse [of] that entity into SK Foods, L.P."
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1 90. At the December 14, 2007 meeting, the managers in attendance were presented
2 with information for the new formations of SK Farms Services and SK Frozen Foods and others,
3 and the managers in attendance approved the transfer of assets from SK Foods to SK Frozen
4 Foods.

5 91. Almost all of the business conducted at this meeting related to Affiliated
6 Defendants, rather than to SK Foods.

7 92. One of the few, and perhaps the only, partnership meeting of SK Foods took place
8 on May 28, 2008. The minutes of that meeting declare a quorum based on the presence of Salyer
9 alone. The purpose of the meeting was simply to "accept the resignation" of Randy Rahal as a
10 Director.

11 93. Upon information and belief, neither SK Foods nor any of the Owner Defendants
12 or Affiliated Defendants had regular meetings of shareholders, directors, partners or members.

13 94. Upon information and belief, when meetings were held by owners or
14 management, those meetings were not limited to a single entity, but rather, involved overlapping
15 issues involving many if not all of the Owner Defendants and Affiliated Defendants, as well as
16 other Salyer-related entities.

17 **Shared management and administration**

18 95. Debtor, the Owner Defendants and the Affiliated Defendants shared management.

19 96. Management for the Affiliated Defendants were employees of SK Foods and paid
20 by SK Foods, even though they performed services for other Defendants.

21 97. Shondale Seymour served as Chief Financial Officer of SK Foods and of various
22 Affiliated Defendants, including Blackstone, SS Farms and SSC Farming.

23 98. Lisa Crist was Executive Vice President of Administration of the Debtors and
24 various Affiliated Defendants.

25 99. Steve King, SK Foods' former Vice President of Operations also provided senior
26 management oversight for CSSS and for certain activities of SSC Farming, SSC I and SSC II.

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100. Richard Emmett, SK Foods' former Vice President of Ag Operations, also provided senior management oversight for SS Farms, SSC Farming, SSC I and SSC II. His business card represented that he was employed by SK Foods.

101. Upon information and belief, Jeanne Johnston was responsible for business development matters for the "SK Foods Group" in its entirety, including marketing materials and also served as Mr. Salyer's executive assistant for all matters relating to the Salyer's business interests.

102. Richard Lawrence was Vice President of SK Foods' International Operations, and also served as Managing Director of certain of the Foreign Entities.

103. Until his resignation effective December 11, 2006, Mark S. Grewal was an officer, manager or director of SK Foods as well as all of the following entities: SKPM, SKF Aviation, SKF Canning, RHM, SK Foods, LLC, SS Farms, SSC Farming, Blackstone, CSSS, certain of the Foreign Entities and SSC Investments, among others.

104. Until his resignation effective May 6, 2006, Richard Washburn was an officer manager or director of each of the following entities: SKPM, SKF Aviation, SKF Canning, RHM, SK Foods, SK Foods, LLC, SS Farms, SSC Farming, Blackstone, CSSS, certain of the Foreign Entities and SSC Investments, among others

105. SK Farms Services did not have any officers and relied entirely on SK Foods for its management.

106. As of January 2009, with the exception of one administrative staff and a few farm hands, all other administrative and operations support for SS Farms, SSC Farming, SSC I, SSC II, SK Farms Services, and other Affiliated Defendants were provided for and paid for by SK Foods. These functions included human resources, administration, IS/IT functions, and accounting.

107. Individuals in SK Foods' accounting department performed accounting functions for many of the Affiliated Defendants, including but not limited to SS Farms, SSC Farming, SSC I and SSC II.

1 108. SK Foods' Information Services department performed IT functions for the
2 Affiliated Defendants.

3 109. SK Foods provided management for certain of the Foreign Entities. Although for
4 some time management fees were charged to those Defendants, no effort was ever made to
5 collect the fees.

6 110. Upon information and belief, SK Foods employees performed management and
7 administrative functions for the other Affiliated Defendants as well.

8 111. Although SK Foods employees performed accounting and record keeping services
9 for the Affiliated Defendants, neither SK Foods nor the Affiliated Defendants tracked the amount
10 of time or the specific services being provided by SK Foods.

11 112. In addition, although SK Foods and the Affiliated Defendants purported to
12 allocate administrative expenses to the appropriate company or recipient, the Affiliated
13 Defendants never paid the allocated expenses billed by SK Foods. Nor did SK Foods ever seek
14 to enforce or otherwise obtain payment.

15 113. After 2007, SK Foods and the Affiliated Defendants stopped allocating
16 administrative expenses because they were never paid in the past and because there was no
17 meaningful way to allocate those expenses.

18 **Shared facilities, records and resources**

19 114. SK Foods had several physical locations. "SK Foods Group" maintained
20 "Executive Offices" at 200 Sky Park Drive, Monterey, California. SMC, SSC I, SSC II, SSC III,
21 SK Farms Services, SK Frozen Foods and SKF Aviation all listed this address as their primary
22 location.

23 115. "SK Foods Group" maintained "corporate offices" at 21 Lower Ragsdale Drive,
24 Monterey, California. SKPM also listed this address as its principal location.

25 116. The SK Foods maintained and operated its processing operations at 1175 S. 19th
26 Avenue, P.O. Box 160, Lemoore, California. RHM, SS Farms, SSC Farming, Blackstone and
27 CSSS all listed this address as their primary location.
28

117. Records of the various entities were stored and maintained together. Paper records of the various entities were stored at SK Foods' places of business or in storage units under SK Foods' control.

118. The Defendants' electronic documents were stored on computer systems owned and maintained by SK Foods.

119. All Defendants and others used the SK Foods email addresses and the SK Foods.com domain name. The Defendants used SK Foods' e-mail servers to store and maintain all their e-mail correspondence.

120. SK Foods employees had unfettered access to all of the Defendants' paper and electronic records.

121. SK Foods employees also regularly accessed these records for the benefit of, and at the specific request of, the Defendants.

122. Almost all of the Defendants shared insurance coverage with SK Foods for workers' compensation and general liability under policies purchased and paid for by SK Foods. For instance, an insurance policy issued to "SK Foods PM Corp" on February 19, 2009 identified the following entities under the definition of "Company": SKPM, SK Foods, L.P., Salyer, Blackstone, the SSR Trust, the CGS Trust, the SAS Trust, SS Farms, SARS, LLC, CSSS, SK Foods, LLC, SKF Aviation, SSC Farming, SSC I, SSC II, SSC III, SK Farm Services, SK Frozen Foods, RHM, Carmel Wine Merchants, and others.

123. In 2006, SK Foods prepared consolidated financial statements which included the financial position and results of operations of the Foreign Entities, as well as SKF Aviation and RHM.

124. Assets were purchased for Blackstone, SKF Aviation, the Foreign Entities and other Salyer entities, including Salyer personally, using SK Foods credit cards.

No arms-length dealings between entities

125. The business relationships among the Debtor and Affiliated Defendants were not negotiated or carried on at "arms length".

126. The Debtor and Affiliated Defendants routinely performed services and exchanged funds in the absence of formal written agreements or in disregard of the terms of existing written agreements.

127. As an example, for some time, the Debtor and RHM discharged wastewater onto land owned by SSC Farming, SSC I and SSC II without any contractual relationship between the parties. Eventually, "discharge agreements" were drafted, but the terms of those agreements were never enforced and payments purportedly under those discharge agreements were made on an ad hoc basis whenever the Defendants holding title to the land needed funds.

128. At the direction of Salyer and/or the SSR Trust and/or others acting on their behalf or in concert with them and using confidential information, SSC Farming, SSC I and SSC II purportedly terminated the discharge agreements for the purpose of enhancing their own bargaining position vis-à-vis the Debtor and RHM during the anticipated sale of the Debtor's operating assets. Salyer and/or the SSR Trust caused the termination of the discharge agreements for their own personal benefit and in disregard of the harm to the Debtor. As a result, Salyer, the SSR Trust, SSC Farming, SSC I and SSC II received in excess of \$1.2 million from the Debtor in order to allow for the sale of the Debtor's operating assets.

129. The pricing of products or services provided by one entity to another was not negotiated, but rather, was set by Salyer who controlled both parties.

130. In addition, Salyer from time to time retroactively reset prices charged to SK Foods by the other Defendants. For instance, near the end of 2008, when SSC III and SS Farms were losing money, Salyer unilaterally caused SSC III and SS Farms to bill SK Foods amounts in excess of the amounts called for in the existing agreements.

131. As a further example, although CSSS provided the fiber drums and rail trans-loading for SK Foods, there was no contract describing the terms of this relationship.

132. As a further example, Salyer American Fresh Foods was nominally the lessee on the DAX software system. SK Foods paid the vast majority of the initial set up costs and subsequent lease payments. Further, the software ran on servers and computers that SK Foods

1 owned and maintained. Yet, there were no written agreements among Salyer American Fresh
2 Foods, SK Foods and the other Defendants for the use of the software and computer system.

3 133. As a further example, in April 2008, Salyer withdrew \$1.7 million from SS Farms
4 and deposited those funds into his personal account. On information and belief, he represented
5 that he was using those funds to pay down a note on which SSC Farming was an obligor, and
6 that by paying off this note, the SSC Farming land could be used as collateral for a separate loan
7 to another Salyer entity, Salyer American Fresh Foods.

8 134. Debtor and RHM paid in excess of \$1 million annually to SKF Aviation
9 purportedly as advance payment for future business flights for SK Foods' employees. However,
10 upon information and belief, neither SK Foods nor SKF Aviation kept records of the number of
11 flights provided, the business purposes of each flight or the actual allocated expense of using the
12 aircraft.

13 135. In many cases in which invoices were generated by a related party, SK Foods
14 overpaid those invoices. Based on information known to date, more than \$2,300,000 was
15 transferred to related parties through overpaid invoices.

16 136. Upon information and belief, the relationships between Debtor and all the
17 Affiliated Defendants were governed in a similar fashion; that is, without any arms-length
18 negotiations or adherence to contractual terms based on the conduct of the affairs of the different
19 entities as a single enterprise as described above.

20 **Intercompany transfers and commingling of assets**

21 137. SK Foods effectively served as the bank for the Affiliated Defendants, dispensing
22 funds when necessary for their operation and without regard to whether SK Foods received
23 goods or services with a value reasonably equivalent to the money transferred by SK Foods to
24 the Affiliated Defendants.

25 138. Upon information and belief, the Affiliated Defendants did not follow or adhere
26 to corporate formalities in connection with the various transfers of funds, major purchases,
27 performance of services, or divestitures of assets.

28

1 139. Historically, there were a significant number of related party transactions in which
2 funds or other assets were diverted from the Debtor to related parties without an adequate
3 explanation. SK Foods regularly issued checks to Affiliated Defendants, and Affiliated
4 Defendants regularly issued checks to each other and/or to SK Foods without documentation
5 substantiating the purpose of the payment.

6 140. Money regularly was transferred back and forth between and among Salyer-
7 related Defendants when an entity needed money, not necessarily when it was due under a
8 contract or when an entity provided goods or services to Debtor.

9 141. At various times, SK Foods provided "loans" to SK Frozen Foods, SKF Aviation,
10 SK Farms Services, and others.

11 142. Salyer sometimes sought to have the payments by Affiliated Defendants to SK
12 Foods characterized as "loans" from the Affiliated Defendants to SK Foods even though SK
13 Foods was the source of the funds initially.

14 143. According to financial statements, as of June 30, 2007, transactions by SK Foods
15 with certain of the Affiliated Defendants and others resulted in current related-party receivables
16 of \$18,714,000 and non-current related party receivables of \$22,070,000. Outstanding debts as
17 of that time included transactions with SK Foods, LLC, RHM, Blackstone, SKF Aviation, SS
18 Farms, SSC Farming, certain Foreign Entities and CSSS, among others. As of June 30, 2008,
19 transactions by SK Foods with certain of the Affiliated Defendants and others resulted in current
20 related-party receivables of \$13,534,000 and non-current related party receivables of
21 \$22,406,000.

22 144. As an example of intercompany transfers and non-arms length dealing, SSC
23 Farming which holds title to land for growing tomatoes and for wastewater discharge, owed
24 approximately \$12 million to SK Foods as of December 31, 2007 due to intercompany transfers
25 received from SK Foods. That amount included \$1.5 million that SK Foods paid to a title
26 company for the benefit of SSC Farming in order for SSC Farming to purchase land used for
27 waste water by RHM. SK Foods also provided \$700,000 for the purchase of another parcel of
28 land to which SSC Farming holds title. There was no rational business purpose for SK Foods to

1 provide the funds to SSC Farming to purchase land and thereafter agree to pay yearly discharge
2 fees to SSC Farming equal to the initial cost of purchasing fee title to the land. SK Foods could
3 have taken title to the land and eliminated unnecessary and above market discharge fees, and
4 maintain its own control over the land.

5 145. Based on its dealings with the SSC Entities (which owned land for growing
6 tomatoes and for wastewater discharge) and with SS Farms for harvesting, there was no
7 legitimate business reason for SK Foods to transfer vast sums of money to SSC Farming such
8 that SSC Farming owes in excess of \$12 million to SK Foods.

9 146. As another example, SK Foods entered into an agreement with Westlands Water
10 District to purchase certain parcels of land uniquely situated to SK Foods' processing facility in
11 order to receive waste water discharge. After the contract was negotiated but prior to closing,
12 Salyer and SKPM arranged for SSC I and SSC II to take title to the property. SSC I and SSC II
13 did not provide any consideration to SK Foods for this purported assignment of the rights to
14 purchase this land, the assignment was not documented, and the funds to purchase that land came
15 from yet other Defendants. There was no benefit to, or legitimate business purpose associated
16 with, SK Foods allowing SSC I and SSC II taking title to the waste water discharge land, which
17 in fact was to SK Foods' detriment.

18 147. As another example of intercompany transfers, SK Foods "borrowed" \$4 million
19 from SS Farms at the end of 2006. SK Foods then paid the \$4 million to SSC Farming. SSC
20 Farming was supposed to use the funds to pay down a line of credit, which had no benefit to SK
21 Foods.

22 148. As another example of intercompany transfers, in November 2005, SK Foods paid
23 \$3 million to SSC Farming for the purpose of paying down a line of credit with Wells Fargo held
24 by SSC Farming, SS Farms and Blackstone.

25 149. As another example of intercompany transfers, in December 2006, SK Foods
26 transferred \$4 million through the SSR Trust to RHM and SKF Aviation allowing them to make
27 tax prepayments.
28

1 150. As further examples of intercompany transfers, SK Foods paid invoices for
2 liabilities incurred by Affiliated Defendants, reimbursed Affiliated Defendants and Owner
3 Defendants for costs spent on tenant improvements at the headquarters locations in Monterey,
4 and provided funding to certain related Defendants to repay intercompany liability of other
5 related Defendants, with no benefit to the Debtors.

6 151. Salyer directed and caused SK Foods to make payments to various Affiliated
7 Defendants for "prepaid expenses," which were the functional equivalent of intercompany
8 transfers. The payments generally were made at the end of December for services or goods to be
9 provided in the following year. However, on information and belief, the amounts of the "prepaid
10 expenses" were arbitrarily determined based on Salyer's perceived personal tax advantages
11 rather than for SK Foods' legitimate business purposes.

12 152. Although the payments nominally were for "prepaid expenses," it was common
13 for the Affiliated Defendants to return the funds to SK Foods within the first few weeks of
14 January or to pay the monies to another Affiliated Defendant based on the Affiliated Defendant's
15 need for funds. In short, for certain payments for "prepaid expenses," SK Foods in fact did not
16 prepay any actual expenses despite the characterization of the transfers.

17 153. For example, SK Foods commonly made such prepayments to SS Farms in the
18 last week in December, which then returned the funds to SK Foods in January. SS Farms
19 booked its return of these funds as "loans" to SK Foods.

20 154. In December 2007, SK Foods paid \$9 million for "prepaid expenses" to SS Farms
21 for future services even though there was no contract between SK Foods and SS Farms. SS
22 Farms did not send invoices to SK Foods prior to 2008.

23 155. As another example, in December 2007, SK Foods paid \$6 million to SK Farms
24 Services for "prepaid expenses" for future services. SK Farms Services was a new entity
25 purportedly created to make bulk purchases on behalf of the Debtors and the Affiliated
26 Defendants. SK Farms Services had otherwise not been capitalized. On information and belief,
27 Salyer had SK Foods transfer the \$6 million to reduce his taxes for 2007.
28

1 156. However, in February 2008, SK Foods needed funds to pay down its loan with its
2 secured lenders. Because SK Foods did not have the funds to do so, Salyer caused SK Farms
3 Services to transfer the \$6 million to SSC Farming, which in turn transferred the \$6 million back
4 to SK Foods.

5 157. SK Farms Services recorded the \$6 million transfer to SSC Farming as a loan.
6 Salyer wanted the \$6 million payment from SSC Farming to SK Foods also booked as loan from
7 SSC Farming. However, SK Foods' Chief Financial Officer at the time refused because SSC
8 Farming owed SK Foods in excess of \$6 million on account of inter-company transfers and other
9 claims. Thus SSC Farming and SK Foods treated SSC Farming's \$6 million transfer as a
10 payment on account of SSC Farming's indebtedness owed to SK Farms.

11 158. SK Farms Services never at any time performed bulk purchasing for SK Foods or
12 any other entity. SK Farms Services was never capitalized and has no assets except for its \$6
13 million receivable from SSC Farming.

14 159. As another example of prepaid expenses, SK Foods paid \$1.5 million to SKF
15 Aviation in December 2007 for aviation transportation to be provided in 2008. On information
16 and belief, there are no records or logs of flights presented to SK Foods to show whether and to
17 what extent the prepaid expenses in fact were utilized, who flew on the aircraft, or the purpose of
18 the flights. Salyer used the aircraft repeatedly in 2008, including for his personal use. On
19 information and belief, at the direction of Salyer, SK Foods directly or through the Affiliated
20 Defendants paid arbitrary amounts to SKF Aviation to enable SKF Aviation to fund Salyer's use
21 of its aircraft.

22 160. SK Foods and the Defendants documented and treated transfer of funds among
23 themselves differently than transactions with other creditors.

24 161. The Debtor and Affiliated Defendants generally did not document whether the
25 "transfers," "loans," or "prepaid expenses" were repaid. Nor was there billing associated with
26 the alleged prepaid expenses to track the extent to which the Debtor in fact received services or
27 goods applied against the prepayments or associated with the loans to track whether they were
28 being repaid.

1 162. Payment of inter-company obligations was frequently deferred and, if paid at all,
2 “caught up” at various intervals, often at the end of a tax year.

3 163. Based on information known to date, between January 2005 and February 2009,
4 more than \$170,000,000 was transferred from SK Foods to related parties, whereas less than
5 \$37,000,000 flowed into SK Foods from those related parties. During this time period, therefore,
6 there was a net value of transactions from SK Foods to related parties of more than
7 \$133,000,000.

8 164. Based on information known to date, between January 2005 and February 2009,
9 the following total values were recorded for transactions from SK Foods to the identified related
10 party:

11	a.	SS Farms:	\$101,113,000
12	b.	CSSS:	\$16,153,000
13	c.	SKF Aviation:	\$13,560,000
14	d.	SSR Trust:	\$6,367,000
15	e.	SK Farms Services:	\$6,005,000
16	f.	SKPM:	\$2,458,000
17	g.	SSC Farming:	\$2,199,000
18	h.	Cedenco Australia:	\$1,700,000
19	i.	Blackstone:	\$918,000
20	j.	Cedenco:	\$800,000
21	k.	SK Australia:	\$247,000
22	l.	SK International:	\$241,000
23	m.	SMC:	\$165,000

24 These amounts do not include payments by SK Foods characterized as “investments” in these
25 entities, which additional payments or “investments” are described below.

26 165. Based on a review of SK Foods’ general ledger, between January 1, 2000 and the
27 present, more than \$434 million in transactions took place from SK Foods to the named
28 defendants and certain other related parties, whereas there were less than \$219 million in

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1 transactions into SK Foods from those same parties. During this time period, therefore, there
2 was a net value of transactions from SK Foods to these related parties of more than \$215 million.
3 A summary of these transactions is set forth on Exhibit A, attached hereto.
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Attempted Reconciliation

166. SK Foods itself attempted to reconcile these various intercompany transactions when various lenders started questioning the practices. Despite many months of attempting to track all such transactions and the underlying reasons for such transactions, SK Foods ultimately determined it was not possible to determine the purposes for all the transactions and to reconcile the books.

167. Management was not able to determine the purposes of various transactions because there was often no backup for the transfers. For instance, when checks were used, generally there were no check requests or other documentation. When wire transfers were used, amounts transferred were rounded up, again without backup.

168. In sum, even when money could be followed from one entity to another, the underlying purposes of the transactions generally could not be determined.

169. At the end of February 2008, Debtor and Affiliated Defendants transferred funds among each other in an effort to balance the intercompany transfers, despite a lack of understanding for the purposes of the transactions.

170. At the conclusion of that process, SK Foods was left with approximately \$9 million in unpaid receivables because the Affiliated Defendants had insufficient capital to repay their obligations.

Investment in and Subsequent "Divestiture" of the Foreign Entities

171. SK Foods sought to diversify its operations and access foreign markets by expanding to New Zealand and Australia, whose growing seasons are opposite of that of California. Cedenco Foods Limited ("Cedenco"), Cedenco Ohakune and SK Foods International managed operations in New Zealand similar to those of SK Foods, while Cedenco JV, Cedenco Australia Partnership and SK Foods Australia managed similar operations in Australia. Those entities are engaged in tomato processing and the dehydration of various kinds of vegetables.

172. SK Foods paid the purchase price and associated expenses to acquire the equity interests in the Foreign Entities. Therefore, SK Foods initially owned (directly or indirectly) the Foreign Entities.

1 173. In 2001, SK Foods formed and became a member of SK Foods, LLC, which then
2 formed and became the 100% shareholder of SK Foods International.

3 174. In a series of transactions from May 2001 to September 2003, SK Foods
4 International purchased all of the common stock of Cedenco.

5 175. In 2002, SK Foods formed and became the sole stockholder of SK Foods
6 Australia.

7 176. In March 2002, SK Foods Australia purchased a 50% interest in Cedenco
8 Australia. The other 50% interest in Cedenco Australia was held by Cedenco JV, which was a
9 wholly-owned subsidiary of Cedenco, until March 2004 when it was sold to SK Foods Australia.

10 177. In November 2005, Cedenco acquired the business and certain assets of Sunrise
11 Coast New Zealand, as well as 100% of the common stock of Sunrise Coast Japan. The
12 businesses were transferred to a new corporation called Sunrise Coast. Both Sunrise Coast
13 entities, as well as the new corporation are 100% owned subsidiaries of Cedenco.

14 178. In November 2005, SK Foods International acquired 56.25% of what is now
15 Cedenco Ohakune.

16 179. SK Foods provided capital to fund the Foreign Entities' operations.

17 180. The ownership and operation of the Foreign Entities reportedly helped establish
18 an international reputation for SK Foods, and SK Foods had a management group specifically
19 focused on maintaining and growing SK Foods' international activity.

20 181. In or about December 2007, SK Foods owned the Foreign Entities as a result of
21 having expended the funds both to purchase and operate those entities.

22 182. Salyer, SKPM, and/or others working at Salyer's direction caused SK Foods to
23 transfer ownership of the Foreign Entities to other entities without consideration or benefit to SK
24 Foods. Further, they purported to "back date" the transfer to November 1, 2006. On information
25 and belief, the transaction documents were executed well after November 2006 and within two
26 years of the date of the Petition.

1 183. Given the assets owned and operated by the Foreign Entities and the purpose of
2 purchasing the Foreign Entities, the divestiture was not in the best interests of SK Foods and did
3 not serve a legitimate corporate purpose.

4 184. At the time of the divestiture, the Foreign Entities owed SK Foods \$18 million,
5 which was net of \$10 million that SK Foods owed to the Foreign Entities (The Foreign Entities
6 thus owed a total of \$28 million to SK Foods.)

7 185. According to Consolidated Financial Statements for SK Foods issued for the eight
8 month period ending June 30, 2007 and dated January 15, 2008, SK Foods "sold the
9 Partnership's inter-company receivables to a revocable trust with common ownership with the
10 Partnership." SK Foods documented the transfer pursuant to a Debt Assignment Agreement.

11 186. The revocable trust referenced in SK Foods financial statements is the SSC&L
12 2007 Trust ("SSC&L") which is a trust created by Salyer. "SSC&L" is an acronym for Scott
13 [Salyer], Stephanie [Salyer], Caroline [Salyer], and Louie. "Louie" is Salyer's dog.

14 187. The Debt Assignment Agreement identified Cedenco's address as P.O. Box 160,
15 Lemoore, California, Attn: Mark McCormick. Scott Salyer signed the Debt Assignment
16 Agreement on behalf of Cedenco, the SSC&L Trust and SK Foods.

17 188. On information and belief, SSC&L has no, and never had, operations, revenues,
18 or assets.

19 189. On information and belief, SSC&L did not pay any money to SK Foods for the
20 inter-company receivables, which has a value of at least \$18,293,000.

21 **Salyer's Transfer Of The Drum Line**

22 190. At the direction of Salyer and/or SKPM and/or the SSR Trust or those acting
23 under their direction and control, a valuable asset – "the Drum Line" – was transferred out of the
24 country for no consideration and in violation of injunctions issued by this Court.

25 191. SK Foods used fiber drums in connection with its transport and processing of
26 tomatoes. SK Foods owns a commercial drum manufacturing line ("the Drum Line") that it used
27 to produce the fiber drums used in its processing facilities. The Drum Line has a value of at least
28 \$350,000.

1 192. Salyer, SKPM, and SSR Trust did not attempt to market the Drum Line to
2 unrelated third parties in an effort to maximize the sales price even though the Debtor was in
3 financial distress.

4 193. At or around the date of the Petition, the Defendants disassembled and moved the
5 Drum Line from SK Food's premises to a location owned and or controlled by CSSS.

6 194. SK Foods and CSSS executed a Purchase and Sale Agreement and a Promissory
7 Note, by which SK Foods purported to sell the Drum Line to CSSS and CSSS purported to buy
8 the Drum Line from SK Foods. CSSS did not pay SK Foods anything for the Drum Line;
9 instead SK Foods gave CSSS a Promissory Note, in the amount of \$350,000. No payment was
10 required to be made by CSSS to SK Foods under the Note until December 31, 2009, and the
11 payment due then is only interest on the note, calculated at a fixed rate of 5% per annum.
12 Thereafter, only interest payments were required to be made until the Promissory Note came due
13 on June 1, 2013.

14 195. Salyer signed the Purchase and Sale Agreement as Chief Executive Officer of
15 SKPM.

16 196. Gerard Rose, a purported trustee for SAS Trust and CGS Trust (the putative
17 owners of CSSS), signed the Purchase and Sale Agreement on behalf of CSSS.

18 197. Gerard Rose is an attorney having provided services for SK Foods and the
19 Defendants. Mr. Rose was retained by Salyer and regularly took instruction from Salyer and
20 other officers of SK Foods.

21 198. The Purchase and Sale Agreement did not represent an arms-length transaction,
22 and the terms did not represent market rates and terms.

23 199. CSSS did not have the resources to pay for the Drum Line at the time the
24 Purchase and Sale Agreement was executed and did not have any reasonable or realistic prospect
25 of being able to pay for the Drum Line.

26 200. The Purchase and Sale Agreement was not negotiated in good faith.
27
28

1 201. On information and belief, the Purchase and Sale Agreement was executed around
2 the time of the petition but back-dated to December 1, 2008 in order to conceal the true date of
3 the purported transaction.

4 202. As of the Petition Date, the purported sale of the Drum Line by SK Foods to
5 CSSS had not been reflected in the financial records of SK Foods.

6 203. On August 24, 2009, this Court entered a temporary restraining order to prevent
7 shipment of the Drum Line out of California. The Court then entered a preliminary injunction on
8 September 3, 2009 ("Injunction") to enjoin shipment of the Drum Line to any location outside of
9 California.

10 204. Despite the Injunction, the Drum Line was shipped at Salyer's direction to New
11 Zealand.

12 205. The shipping documents list Affiliated Defendant Monterey Peninsula Farms
13 ("Monterey") as the shipping party, which is not a party to the Purchase and Sale Agreement. The
14 majority owner of Monterey is SSC Farming, whose majority owner is the SSR Trust, whose
15 sole beneficiary is Salyer.

16 206. In litigation concerning the Drum Line, CSSS could not produce a witness who
17 was knowledgeable concerning the identity of the individual who authorized the shipment of the
18 Drum Line to New Zealand, claimed to have no employees and claimed no ongoing operations.

19 207. The Drum Line presently is in possession of a company in New Zealand called K-
20 Pack, which was the original manufacturer of the Drum Line. On information and belief, Salyer
21 intended to refurbish the Drum Line and sell it for his personal benefit.

22 208. The transfer of the Drum Line is representative of intercompany movement of
23 assets, the interchangeable nature of corporate entities, and Salyer's control. It also is
24 representative of Salyer's willingness to act to the detriment of the Debtor in order to benefit
25 himself and the Defendants and entities that he controls.

26 **The Failed Chili Pepper Venture**

27 209. SK Foods funded the purchase of RHM's facility in 2003.
28

210. SK Foods paid for all assets and operations of RHM. RHM was never capitalized and was always insolvent. RHM had no customers other than SK Foods.

211. In or about 2003, Debtor sought to diversify its product offerings and increase utilization of RHM's processing facility by processing chili peppers, which had a different growing season than tomatoes.

212. From 2003 through 2008, SK Foods expended significant sums in an effort to have RHM develop the capability of processing chili peppers.

213. In 2003 and 2004, RHM contracted for the use of a canning line from General Mills and invested approximately \$15-16 million to make it operational.

214. In 2005, RHM spent millions of dollars to purchase five used evaporators. In 2006, RHM began remanufacturing operations, a further step in processing the product for retail sale, which was beyond what SK Foods historically did.

215. In 2007, RHM began its effort to process chili peppers.

216. Due to the shapes and colors of chili peppers, RHM could not develop the mechanical capabilities to pick and sort chili peppers with the efficiency that it picked and sorted tomatoes.

217. In 2007 and 2008, the Debtor invested significant sums to modify and rebuild the processing lines two times in an attempt to increase the efficiency of the automated sorting process.

218. During the first harvest in or about April 2007, RHM was unable to properly process the chili peppers (e.g., peppers were damaged and became unusable), and substantially all of the chili production had to be discarded. SK Foods, who owned the inventory, experienced approximately \$2 million in losses as a result.

219. During the following season in October-November 2007, RHM imported the chili peppers from Mexico at double the normal cost because there were no chili peppers available in Northern California. That season, RHM processed enough chili peppers to satisfy the demand for the entire country for a year. However, many of the chili peppers spoiled or disintegrated due to the passage of time from harvest in Mexico to processing in Colusa, California. After SK Foods

1 incurred significant production costs, many customers refused to purchase the product because of
2 the poor quality. One of the customers (B&G) also refused to pay SK Foods \$1 million in true-
3 up costs.

4 220. During the next season in March-April 2008, RHM improved its mechanical
5 processing, obtained local chili peppers, and processed a three to four year national supply of
6 chili peppers. The customers, however, refused to purchase them. Due to the quality problems
7 in the prior season and failure to meet contractual commitments, the customers made
8 commitments with other suppliers. Overall, Debtor lost more than \$20 million from the chili
9 peppers business.

10 Insolvency

11 221. On information and belief, the Debtor became insolvent no later than the Fourth
12 Quarter 2007 and perhaps earlier.

13 222. Beginning in or about June 2007, the Debtor's banks began to exercise dominion
14 over the Debtor's bank accounts and funds were released from the Debtor's bank accounts only
15 with approval of the banks.

16 223. The notes to the audited financial statements for SK Foods for the eight months
17 ending June 30, 2007, audited by Moss-Adams LLP, disclose that the Partnership "was not in
18 compliance with certain covenants, including the funded debt to operating cash flow ratio, and
19 the fixed charge coverage ratio" for its bank line of credit, short-term borrowings, and long-term
20 debt.

21 224. The same financial statements identified \$18.7 million in current related-party
22 receivables and \$22 million in non-current related party receivables, as well as current related
23 party payables of \$14.048 million and non-current related party payables of \$4.299 million.
24 However, the audited financial statements concluded that "[i]t is not practical to estimate the fair
25 value of related-party receivables or debt due to related parties, due to the nature of these items."

26 225. On information and belief, the property, plant, and equipment ("PPE") on the
27 Moss-Adams financial statements were overvalued because the PPE was already used when
28 purchased, with the PPE continuing to age and depreciate in value while in continued operation.

226. The Debtor lost millions of dollars as a result of the intercompany transfers and prepaid expenses to the Defendants described above.

227. In or about September 2007, the Debtor refinanced its debt, increasing both its term debt and its revolving loans.

228. At or about the same time, the banks and certain financial personnel of the Debtor advised Salyer that he needed to stop his exorbitant monthly expenses given the Debtor's financial condition. He failed and refused to do so.

229. The Debtor lost hundreds of thousands of dollars, if not millions of dollars, due to improper expenses charged by Salyer, which were funded directly or indirectly by the Debtor.

230. As set forth above, the Debtor lost millions of dollars from the failed chili peppers venture.

231. In April 2008, the Federal Bureau of Investigation raided the Debtor's operations in connection with its investigation of alleged price fixing and bribery by the Debtor and/or employees of the Debtor. The FBI seized various records belonging to the Debtor pursuant to search warrants and subpoenas. The raid was well-publicized and caused many customers of the Debtor to discontinue purchases from the Debtor of tomato products, materially depressing revenues.

Identification of Certain Transfers of Assets and Funds

232. According to SK Foods' books and records, the following transfers of funds or assets, among others, were made by SK Foods to SMC³:

Date	Amount	Description in General Ledger
12/31/2008	\$104,621	Liabilities
2/10/2009	\$82,300	Liabilities
2/27/2009	\$82,300	Liabilities

³ The allegations in paragraphs 232 through 241 are based on entries in SK Foods' general ledger. For the reasons outlined in footnote 2, the Trustee has not been able to confirm these entries through other records. The Trustee reserves the right to amend and/or supplement these allegations as appropriate, and reserves the right to identify and pursue other transfers not identified here.

233. According to SK Foods' books and records, the following transfers of funds or assets, among others, were made by SK Foods to the SSR Trust:

Date	Amount	Description in General Ledger
12/28/2007	\$750,000	Capital – S. Salyer, Revocable Trust
12/30/2007	\$500,000	Rent/Lease – Bins/Drums
12/28/2008	\$1,000,000	
4/14/2008	\$500,000	Capital – S. Salyer, Revocable Trust
4/14/2008	\$100,000	Capital – S. Salyer, Revocable Trust
4/14/2008	\$50,000	Capital – S. Salyer, Revocable Trust
6/16/2008	\$210,000	Capital – S. Salyer, Revocable Trust
9/15/2008	\$240,000	Capital – S. Salyer, Revocable Trust
12/30/2008	\$250,000	Accounts Payable – Related Party
12/30/2008	\$225,000	Accounts Payable – Related Party
12/30/2008	\$650,000	Capital – S. Salyer, Revocable Trust

234. According to SK Foods' books and records, the following transfers of funds or assets, among others, were made by SK Foods to SK Frozen Foods:

Date	Amount	Description in General Ledger
6/12/2008	\$292,875	Accounts Receivable – Related Parties
9/26/2008	\$586,244	Accounts Payable – Related Party
1/20/2009	\$59,718	Accounts Receivable – Related Parties
2/25/2009	\$51,628	Accounts Payable – Related Party

235. According to SK Foods' books and records, the following transfers of funds or assets, among others, were made by SK Foods to SKPM:

Date	Amount	Description in General Ledger
1/28/2008	\$2,298,396	I/C CASH – SKPM CORP

11/25/2008	\$126,191	Accounts Payable – Related Party
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236. According to SK Foods' books and records, the following transfers of funds or assets, among others, were made by SK Foods to SS Farms:

Date	Amount	Description in General Ledger
9/3/2007	\$278,924	CLEARING ACCOUNT
9/3/2007	\$235,880	CLEARING ACCOUNT
9/3/2007	\$115,026	CLEARING ACCOUNT
9/4/2007	\$1,103,041	GROWER FEES WITHHELD
9/4/2007	\$359,061	RAW MATERIAL INVENTORY - PROCESSED
10/2/2007	\$1,052,333	GROWER FEES WITHHELD
10/2/2007	\$1,021,887	GROWER FEES WITHHELD
10/2/2007	\$372,112	RAW MATERIAL INVENTORY - PROCESSED
10/2/2007	\$360,864	RAW MATERIAL INVENTORY - PROCESSED
10/12/2007	\$286,531	CLEARING ACCOUNT
10/12/2007	\$98,913	CLEARING ACCOUNT
10/16/2007	\$1,119,279	GROWER FEES WITHHELD
10/16/2007	\$399,587	RAW MATERIAL INVENTORY - PROCESSED
10/26/2007	\$171,760	CLEARING ACCOUNT
10/26/2007	\$102,774	CLEARING ACCOUNT
10/26/2007	\$71,557	CLEARING ACCOUNT
11/1/2007	\$433,037	CLEARING ACCOUNT
11/1/2007	\$150,565	CLEARING ACCOUNT
11/6/2007	\$130,263	CLEARING ACCOUNT
11/6/2007	\$83,497	CLEARING ACCOUNT
11/6/2007	\$70,139	CLEARING ACCOUNT
11/6/2007	\$56,341	CLEARING ACCOUNT
11/6/2007	\$52,847	CLEARING ACCOUNT
11/8/2007	\$169,904	CLEARING ACCOUNT
11/8/2007	\$114,310	CLEARING ACCOUNT
11/8/2007	\$94,449	CLEARING ACCOUNT
11/8/2007	\$68,024	CLEARING ACCOUNT
11/8/2007	\$63,293	CLEARING ACCOUNT
11/16/2007	\$1,027,111	GROWER FEES WITHHELD
11/16/2007	\$398,680	INTEREST EXP PAYABLE AFFILIATED LT
11/16/2007	\$110,953	RAW MATERIAL INVENTORY - PROCESSED
11/16/2007	\$97,861	RAW MATERIAL INVENTORY

		- PROCESSED
11/16/2007	\$97,686	RAW MATERIAL INVENTORY - PROCESSED
11/16/2007	\$97,104	RAW MATERIAL INVENTORY - PROCESSED
11/16/2007	\$96,383	RAW MATERIAL INVENTORY - PROCESSED
11/16/2007	\$94,244	RAW MATERIAL INVENTORY - PROCESSED
11/16/2007	\$93,318	RAW MATERIAL INVENTORY - PROCESSED
11/16/2007	\$92,861	RAW MATERIAL INVENTORY - PROCESSED
11/16/2007	\$92,029	RAW MATERIAL INVENTORY - PROCESSED
11/16/2007	\$86,231	RAW MATERIAL INVENTORY - PROCESSED
11/16/2007	\$85,066	RAW MATERIAL INVENTORY - PROCESSED
11/16/2007	\$75,744	RAW MATERIAL INVENTORY - PROCESSED
11/16/2007	\$75,692	RAW MATERIAL INVENTORY - PROCESSED
11/16/2007	\$74,148	RAW MATERIAL INVENTORY - PROCESSED
11/16/2007	\$73,321	RAW MATERIAL INVENTORY - PROCESSED
11/16/2007	\$68,608	RAW MATERIAL INVENTORY - PROCESSED
11/16/2007	\$66,159	RAW MATERIAL INVENTORY - PROCESSED
11/16/2007	\$62,425	RAW MATERIAL INVENTORY - PROCESSED
11/16/2007	\$61,795	RAW MATERIAL INVENTORY - PROCESSED
11/16/2007	\$60,099	RAW MATERIAL INVENTORY - PROCESSED
11/16/2007	\$57,500	RAW MATERIAL INVENTORY - PROCESSED
11/16/2007	\$57,300	RAW MATERIAL INVENTORY - PROCESSED
11/28/2007	\$318,623	ACCOUNTS PAYABLE - ACCRUED
11/28/2007	\$112,213	ACCOUNTS PAYABLE - ACCRUED
12/14/2007	\$405,078	RAW MATERIAL INVENTORY - PROCESSED

12/20/2007	\$369,568	RAW MATERIAL INVENTORY - PROCESSED
1/3/2008	\$1,049,863	GROWER FEES WITHHELD
1/3/2008	\$884,318	GROWER FEES WITHHELD
1/3/2008	\$666,470	GROWER FEES WITHHELD
1/3/2008	\$336,698	RAW MATERIAL INVENTORY - PROCESSED
1/3/2008	\$285,889	RAW MATERIAL INVENTORY - PROCESSED
1/15/2008	\$5,428,708	I/C CASH - SS FARMS
1/31/2008	\$4,000,000	ACCOUNTS PAYABLE - ACCRUED
3/17/2008	\$550,000	ACCOUNTS PAYABLE - ACCRUED
3/18/2008	\$225,361	
3/27/2008	\$100,000	UNKNOWN
4/1/2008	\$275,000	UNKNOWN
4/7/2008	\$300,000	UNKNOWN
4/8/2008	\$191,462	UNKNOWN
5/9/2008	\$500,000	paydown loan -SSF
5/14/2008	\$600,000	paydown loan -SSF
5/15/2008	\$200,000	paydown loan -SSF
5/28/2008	\$355,764	paydown ssf note
5/28/2008	\$50,000	paydown ssf note
6/4/2008	\$300,000	paydown note SSF
6/6/2008	\$500,000	ST (90 day) Notes Receivable SSF
6/6/2008	\$180,068	Notes Payable SSF pay off
7/1/2008	\$191,765	Notes Payable SSF pay off
8/4/2008	\$1,000,000	PAYOFF 7/21 SSF LOAN TO SKF \$1.5M 8/4
8/6/2008	\$51,490	PMT ACCRUED INTEREST SSF 8/6
8/14/2008	\$1,599,179	
8/22/2008	\$1,507,034	
8/28/2008	\$1,557,675	
9/16/2008	\$1,134,298	08WK7HAUL-SKF&CCC90%
9/29/2008	\$2,691,813	
10/7/2008	\$1,562,493	
10/14/2008	\$1,500,796	
10/17/2008	\$1,458,232	
10/23/2008	\$1,353,144	
10/24/2008	\$102,636	
10/28/2008	\$1,054,284	
10/30/2008	\$85,138	Grower Payments 11-3-08
11/4/2008	\$440,434	08WK15HAUL-SKF&CCC90%
11/4/2008	\$131,499	08WK16HAUL-SKF&CCC90%
11/4/2008	\$81,517	water purchase

11/5/2008	\$318,840	Pepper Harvest
11/5/2008	\$163,216	Pepper Harvest
11/13/2008	\$603,198	
1/2/2009	\$600,000	GLV-000006739
1/12/2009	\$500,000	ST Advance pymt Rltd Pty SSF
1/14/2009	\$1,500,000	ST Advance Receipt Rltd Pty SSF
1/14/2009	\$756,000	ST Advance Receipt Rltd Pty SSF
1/14/2009	\$500,000	
2/27/2009	\$1,025,000	Repayment of Short term Borrowings 1mm & 25k

237. According to SK Foods' books and records, the following transfers of funds or assets, among others, were made by SK Foods to SSC Farming:

Date	Amount	Description in General Ledger
10/18/2007	\$75,000	Other Long Term Assets
7/24/2008	\$100,000	Accounts Payable – Related Party
7/25/2008	\$50,000	Rent/Lease – General
8/7/2008	\$150,000	Accounts Payable – Related Party
8/20/2008	\$464,866	Accounts Payable – Growers
10/13/2008	\$77,201	RAW TOMATOES CONVENTIONAL
10/20/2008	\$85,160	RAW TOMATOES CONVENTIONAL
11/11/2008	\$316,000	Accounts Payable – Related Party

238. According to SK Foods' books and records, the following transfers of funds or assets, among others, were made by SK Foods to the SSC I:

Date	Amount	Description in General Ledger
8/6/2008	\$160,000	Accounts Payable – Related Party
2/20/2008	\$66,357	Accounts Payable – Growers
8/26/2008	\$235,813	Accounts Payable – Growers
9/15/2008	\$65,606	Accounts Payable – Growers
11/11/2008	\$187,925	Accounts Payable – Related Party
11/13/2008	\$149,148	Accounts Payable - Growers

239. According to SK Foods' books and records, the following transfers of funds or assets, among others, were made by SK Foods to SSC II:

Date	Amount	Description in General Ledger
8/6/2008	\$230,000	Accounts Payable – Related Party
8/20/2008	\$300,043	Accounts Payable – Growers
8/26/2008	\$345,685	Accounts Payable – Growers
10/24/2008	\$99,191	Accounts Payable – Growers
10/30/2008	\$119,183	Accounts Payable – Growers
10/30/2008	\$110,318	Accounts Payable – Growers
11/11/2008	\$161,531	Accounts Payable – Related Party
11/13/2008	\$325,366	Accounts Payable -- Growers

240. According to SK Foods' books and records, the following transfers of funds or assets, among others, were made by SK Foods to SSC III:

Date	Amount	Description in General Ledger
10/14/2008	\$270,696	Accounts Payable – Growers
10/30/2008	\$282,620	Accounts Payable – Growers
11/13/2008	\$833,255	Accounts Payable -- Growers

241. The above-referenced transfers are collectively referred to herein as the "Transfers." The Trustee reserves the right to identify and pursue other transfers where appropriate.

Count I: Avoidance of Preferential Payments Pursuant to 11 U.S.C. §547

242. The Trustee incorporates by reference the preceding paragraphs of this Complaint as though set forth fully herein.

243. The Transfers were transfers of Debtor's property to creditors of Debtor and made while Debtor was insolvent.

1 244. The Transfers were made on account of antecedent debts owed by SK Foods
2 before the Transfers were made.

3 245. Defendants are "insiders" as that term is defined in the United States Bankruptcy
4 Code.

5 246. Many of the Transfers (all transfers dated May 5, 2008 to the present) were made
6 within one year of the Petition Date.

7 247. The Transfers enabled the recipients to receive more than they would have
8 received if the Transfers had not been made, if the case were filed under Chapter 7 and if
9 Defendants were paid in accordance with the Bankruptcy Code.

10 248. No new or additional value was given contemporaneously with the Transfers.

11 249. The Transfers were not in payment of a debt incurred in the ordinary course of
12 Debtor's business affairs, and were not made according to ordinary business terms.

13 250. Defendants are liable for the return of the assets transferred as avoidable
14 preferences pursuant to Section 547(b) of the Bankruptcy Code.

15 WHEREFORE, the Trustee prays for a judgment as set forth below.

16 **COUNT II: Avoidance of Fraudulent Transfers Pursuant to 11 U.S.C. §548**

17 251. The Trustee incorporates by reference the preceding paragraphs of this
18 Complaint as though set forth fully herein.

19 252. The Transfers were transfers of Debtor's property.

20 253. The Transfers were made within two years of the Petition Date.

21 254. The Transfers were made with actual intent to hinder, delay, or defraud entities to
22 which SK Foods was or became indebted.

23 255. Debtor received less than a reasonably equivalent value in exchange for the
24 Transfers.

25 256. Debtor was insolvent on the date of the Transfers or became insolvent as a result
26 of the Transfers.

27 257. Debtor was engaged in business for which the property remaining with the Debtor
28 was an unreasonably small capital.

258. Debtor intended to incur or believed that it would incur debts that would be beyond its ability to pay.

259. Defendants are liable for the return of the Transfers pursuant to 11 U.S.C. § 548 of the Bankruptcy Code.

WHEREFORE, the Trustee prays for a judgment as set forth below.

COUNT III: Avoidance of Fraudulent Transfers Pursuant to
11 U.S.C. §§ 544(b) and 550(a) and California Civil Code §§ 3439.07, 3439.04 and 3439.05

260. The Trustee incorporates by reference the preceding paragraphs of this Complaint as though set forth fully herein.

261. The Transfers were transfers of Debtor's property.

262. The Transfers were made within four years of the date this Complaint was filed.

263. The Transfers were made without SK Foods receiving a reasonably equivalent value from the Defendants in exchange for the Transfers.

264. SK Foods was insolvent on the date of the Transfers or became insolvent as a result of the Transfers.

265. The Trustee is entitled to recover the Transfers or the value of the Transfers from Defendants for the benefit of the Estate pursuant to 11 U.S.C. §§ 544(b) and 550(a), and California Civil Code § 3439.07.

WHEREFORE, the Trustee prays for judgment as set forth below.

Count IV: Substantive Consolidation Against All Defendants

266. The Trustee hereby incorporates each of the foregoing paragraphs of the Complaint as though set forth fully herein.

267. Each of the Owner Defendants, Affiliated Defendants and the Debtor has common ownership.

268. Each of the Owner Defendants, Affiliated Defendants and the Debtor has common management.

269. Salyer and the Owner Defendants managed and operated each of the Affiliated Defendants and, until Salyer was terminated by the Trustee, the Debtor.

1 270. Debtor, Owner Defendants and Affiliated Defendants all operated as a single
2 cohesive enterprise.

3 271. Owner Defendants and Affiliated Defendants had little, if any, operations
4 independent of their relationships to the Debtor.

5 272. Many of the Owner Defendants and Affiliated Defendants were never capitalized
6 or operated for profit, as described above.

7 273. The Debtor, Owner Defendants and Affiliated Defendants did not negotiate with
8 each other at arms-length.

9 274. The corporate and financial integrity of the Owner Defendants, Affiliated
10 Defendants, and the Debtor has never been respected.

11 275. The funds, assets, books, records and financial affairs of each of the Owner
12 Defendants, Affiliated Defendants and the Debtor have been inextricably commingled.

13 276. With respect to **Blackstone**, in addition to the allegations set forth above,
14 substantive consolidation with the Debtor's estate is appropriate because:

- 15 a. It has common ownership with Debtor and other Defendants (§§ 24, 26, 27)
- 16 b. It has common management with Debtor and other Defendants (§§ 34, 36-37,
17 40-41)
- 18 c. Like Debtor and the other Affiliated Defendants, it is controlled by Salyer and
19 the Owner Defendants (§§ 34, 40-42)
- 20 d. Together with Debtor and the other Defendants, it is operated as a single
21 enterprise (§§ 43-44, 45, 48, 54-61, 62)
- 22 e. It has little if any operations independent of its relationship with Debtor (§§
23 65, 72, 73)
- 24 f. It was never capitalized or operated for profit (§§ 74, 85-86)
- 25 g. It did not adhere to corporate formalities (§§ 87-88, 89, 93-94, 138)
- 26 h. It shares management and administration with Debtor and the other
27 Defendants (§§ 95-96, 97, 98, 101, 104, 107-08, 110-13)
- 28

- i. It shares facilities, records and resources with Debtor and the other Defendants (§§ 116, 117-21, 122, 124)
- j. It did not deal with Debtor and other Defendants at arms-length (§§ 125-26, 129-30, 135-36)
- k. There were inappropriate and insufficiently documented intercompany transfers of funds and other assets between it and Debtor and the other Defendants (§§ 137-40, 142, 143, 148, 150-52, 161-65).

277. With respect to **SS Farms**, in addition to the allegations set forth above, substantive consolidation with the Debtor's estate is appropriate because:

- a. It has common ownership with Debtor and other Defendants (§§ 24, 26, 29)
- b. It has common management with Debtor and other Defendants (§§ 34, 36-37, 40-41)
- c. Like Debtor and the other Affiliated Defendants, it is controlled by Salyer and the Owner Defendants (§§ 34, 40-42)
- d. Together with Debtor and the other Defendants, it is operated as a single enterprise (§§ 43-45, 48, 54-61, 62)
- e. It has little if any operations independent of its relationship with Debtor (§§ 65, 68, 69, 73)
- f. It was never capitalized or operated for profit (§§ 74, 81, 85-86)
- g. It did not adhere to corporate formalities (§§ 87-88, 93-94, 138)
- h. It shares management and administration with Debtor and the other Defendants (§§ 95-96, 97, 98, 100, 101, 103, 104, 106, 107-08, 110-13)
- i. It shares facilities, records and resources with Debtor and the other Defendants (§§ 116, 117-21, 122)
- j. It did not deal with Debtor and other Defendants at arms-length (§§ 125-26, 129-30, 133, 135-36)

1 k. There were inappropriate and insufficiently documented intercompany
2 transfers of funds and other assets between it and Debtor and the other
3 Defendants (§§ 84, 137-40, 142, 143, 147-48, 150-52, 153-54, 161-65).

4
5 278. With respect to **SSC Farming**, in addition to the allegations set forth above,
6 substantive consolidation with the Debtor's estate is appropriate because:

- 7 a. It has common ownership with Debtor and other Defendants (§§ 24, 26, 29)
8 b. It has common management with Debtor and other Defendants (§§ 34, 36-37,
9 40-41)
10 c. Like Debtor and the other Affiliated Defendants, it is controlled by Salyer and
11 the Owner Defendants (§§ 34, 40-42)
12 d. Together with Debtor and the other Defendants, it is operated as a single
13 enterprise (§§ 43-45, 46, 54-61, 62)
14 e. It has little if any operations independent of its relationship with Debtor (§§
15 65, 67, 72, 73)
16 f. It was never capitalized or operated for profit (§§ 74, 82, 85-86)
17 g. It did not adhere to corporate formalities (§§ 87-88, 93-94, 138)
18 h. It shares management and administration with Debtor and the other
19 Defendants (§§ 95-96, 97, 98, 99, 100, 101, 104, 106, 107-08, 110-13)
20 i. It shares facilities, records and resources with Debtor and the other
21 Defendants (§§ 116, 117-21, 122)
22 j. It did not deal with Debtor and other Defendants at arms-length (§§ 125-26,
23 127-28, 129-30, 133, 135-36)
24 k. There were inappropriate and insufficiently documented intercompany
25 transfers of funds and other assets between it and Debtor and the other
26 Defendants (§§ 137-40, 142, 143, 144-45, 147-48, 150-52, 157-58, 161-65).

1 279. With respect to **SSC I**, in addition to the allegations set forth above, substantive
2 consolidation with the Debtor's estate is appropriate because:

- 3 a. It has common ownership with Debtor and other Defendants (§§ 24, 26, 30)
- 4 b. It has common management with Debtor and other Defendants (§§ 34, 36-37,
5 40-41)
- 6 c. Like Debtor and the other Affiliated Defendants, it is controlled by Salyer and
7 the Owner Defendants (§§ 34, 40-42)
- 8 d. Together with Debtor and the other Defendants, it is operated as a single
9 enterprise (§§ 43-45, 46, 54-61)
- 10 e. It has little if any operations independent of its relationship with Debtor (§§
11 65, 66, 73)
- 12 f. It was never capitalized or operated for profit (§§ 74, 75-76, 82, 85-86)
- 13 g. It did not adhere to corporate formalities (§§ 87-88, 93-94, 138)
- 14 h. It shares management and administration with Debtor and the other
15 Defendants (§§ 95-96, 98, 99, 100, 101, 106, 107-08, 110-13)
- 16 i. It shares facilities, records and resources with Debtor and the other
17 Defendants (§§ 114, 117-21, 122)
- 18 j. It did not deal with Debtor and other Defendants at arms-length (§§ 125-26,
19 127-30-135-36)
- 20 k. There were inappropriate and insufficiently documented intercompany
21 transfers of funds and other assets between it and Debtor and the other
22 Defendants (§§ 137-40, 142, 146, 150-52, 161-65).

23
24 280. With respect to **SSC II**, in addition to the allegations set forth above, substantive
25 consolidation with the Debtor's estate is appropriate because:

- 26 a. It has common ownership with Debtor and other Defendants (§§ 24, 26, 30)
- 27 b. It has common management with Debtor and other Defendants (§§ 34, 36-37,
28 40-41)

- c. Like Debtor and the other Affiliated Defendants, it is controlled by Salyer and the Owner Defendants (§§ 34, 40-42)
- d. Together with Debtor and the other Defendants, it is operated as a single enterprise (§§ 43-45, 47, 54-61)
- e. It has little if any operations independent of its relationship with Debtor (§§ 65, 66, 73)
- f. It was never capitalized or operated for profit (§§ 74, 75-76, 82, 85-86)
- g. It did not adhere to corporate formalities (§§ 87-88, 93-94, 138)
- h. It shares management and administration with Debtor and the other Defendants (§§ 95-96, 98, 99, 100, 101, 106, 107-08, 110-13)
- i. It shares facilities, records and resources with Debtor and the other Defendants (§§ 114, 117-21, 122)
- j. It did not deal with Debtor and other Defendants at arms-length (§§ 125-26, 127-30, 135-36)
- k. There were inappropriate and insufficiently documented intercompany transfers of funds and other assets between it and Debtor and the other Defendants (§§ 137-40, 142, 146, 150-52, 161-65).

281. With respect to **SSC III**, in addition to the allegations set forth above, substantive consolidation with the Debtor's estate is appropriate because:

- a. It has common ownership with Debtor and other Defendants (§§ 24, 26, 31)
- b. It has common management with Debtor and other Defendants (§§ 34, 36-37, 40-41)
- c. Like Debtor and the other Affiliated Defendants, it is controlled by Salyer and the Owner Defendants (§§ 34, 40-42)
- d. Together with Debtor and the other Defendants, it is operated as a single enterprise (§§ 43-45, 54-61)

- e. It has little if any operations independent of its relationship with Debtor (¶¶ 65, 73)
- f. It was never capitalized or operated for profit (¶¶ 74, 82, 85-86)
- g. It did not adhere to corporate formalities (¶¶ 87-88, 93-94, 138)
- h. It shares management and administration with Debtor and the other Defendants (¶¶ 95-96, 98, 101, 107-08, 110-13)
- i. It shares facilities, records and resources with Debtor and the other Defendants (¶¶ 114, 117-21, 122)
- j. It did not deal with Debtor and other Defendants at arms-length (¶¶ 125-26, 129-30, 135-36)
- k. There were inappropriate and insufficiently documented intercompany transfers of funds and other assets between it and Debtor and the other Defendants (¶¶ 137-40, 142, 150-52, 161-65).

282. With respect to **Monterey**, in addition to the allegations set forth above, substantive consolidation with the Debtor's estate is appropriate because:

- a. It has common ownership with Debtor and other Defendants (¶¶ 24, 26, 31)
- b. It has common management with Debtor and other Defendants (¶¶ 34, 36-38, 40-41)
- c. Like Debtor and the other Affiliated Defendants, it is controlled by Salyer and the Owner Defendants (¶¶ 34, 40-42)
- d. Together with Debtor and the other Defendants, it is operated as a single enterprise (¶¶ 43, 44, 50, 54-61)
- e. It has little if any operations independent of its relationship with Debtor (¶¶ 65, 73, 82)
- f. It was never capitalized or operated for profit (¶¶ 74, 82, 85-86)
- g. It did not adhere to corporate formalities (¶¶ 87-88, 93-94, 138)

- h. It shares management and administration with Debtor and the other Defendants (§§ 95-96, 98, 101, 107-08, 110-13)
- i. It shares facilities, records and resources with Debtor and the other Defendants (§§ 117-21)
- j. It did not deal with Debtor and other Defendants at arms-length (§§ 125-26, 129-30, 135-36, 206-08)
- k. There were inappropriate and insufficiently documented intercompany transfers of funds and other assets between it and Debtor and the other Defendants (§§ 137-40, 142, 150-52, 161-65).

283. With respect to **SMC**, in addition to the allegations set forth above, substantive consolidation with the Debtor's estate is appropriate because:

- a. It has common ownership with Debtor and other Defendants (§§ 24, 26, 32)
- b. It has common management with Debtor and other Defendants (§§ 34, 36-38, 40-41)
- c. Like Debtor and the other Affiliated Defendants, it is controlled by Salyer and the Owner Defendants (§§ 34, 40-42)
- d. Together with Debtor and the other Defendants, it is operated as a single enterprise (§§ 43-44, 49, 54-61)
- e. It has little if any operations independent of its relationship with Debtor (§§ 65, 73, 84)
- f. It was never capitalized or operated for profit (§§ 74, 84, 85-86)
- g. It did not adhere to corporate formalities (§§ 87-88, 93-94, 138)
- h. It shares management and administration with Debtor and the other Defendants (§§ 95-96, 98, 101, 107-08, 110-13)
- i. It shares facilities, records and resources with Debtor and the other Defendants (§§ 114, 117-21)

- j. It did not deal with Debtor and other Defendants at arms-length (§§ 125-26, 129-30, 135-36)
- k. There were inappropriate and insufficiently documented intercompany transfers of funds and other assets between it and Debtor and the other Defendants (§§ 137-40, 141, 142, 150-52, 161-65).

284. With respect to **SK Farms Services**, in addition to the allegations set forth above, substantive consolidation with the Debtor's estate is appropriate because:

- a. It has common ownership with Debtor and other Defendants (§§ 24, 26, 33)
- b. It has common management with Debtor and other Defendants (§§ 34, 36-38, 40-41)
- c. Like Debtor and the other Affiliated Defendants, it is controlled by Salyer and the Owner Defendants (§§ 34, 40-42)
- d. Together with Debtor and the other Defendants, it is operated as a single enterprise (§§ 43, 44, 52, 54-61, 159)
- e. It has little if any operations independent of its relationship with Debtor (§§ 65, 73)
- f. It was never capitalized or operated for profit (§§ 74, 85-86)
- g. It did not adhere to corporate formalities (§§ 87-88, 90, 93-94, 138)
- h. It shares management and administration with Debtor and the other Defendants (§§ 95-96, 98, 101, 105, 107-08, 110-13)
- i. It shares facilities, records and resources with Debtor and the other Defendants (§§ 114, 117-21, 122)
- j. It did not deal with Debtor and other Defendants at arms-length (§§ 125-26, 129-30, 135-36)
- k. There were inappropriate and insufficiently documented intercompany transfers of funds and other assets between it and Debtor and the other Defendants (§§ 137-44, 141, 142, 150-52, 155-57, 159, 161-65).

1
2 285. With respect to **SK Frozen Foods**, in addition to the allegations set forth above,
3 substantive consolidation with the Debtor's estate is appropriate because:

- 4 a. It has common ownership with Debtor and other Defendants (§§ 24, 26, 32)
5 b. It has common management with Debtor and other Defendants (§§ 34, 36-38,
6 40-41)
7 c. Like Debtor and the other Affiliated Defendants, it is controlled by Salyer and
8 the Owner Defendants (§§ 34, 40-42)
9 d. Together with Debtor and the other Defendants, it is operated as a single
10 enterprise (§§ 43-44, 51, 54-61)
11 e. It has little if any operations independent of its relationship with Debtor (§§
12 65, 73, 78-79)
13 f. It was never capitalized or operated for profit (§§ 74, 78-79, 85-86)
14 g. It did not adhere to corporate formalities (§§ 87-89, 90, 93-94, 138)
15 h. It shares management and administration with Debtor and the other
16 Defendants (§§ 95-96, 98, 101, 107-08, 110-13)
17 i. It shares facilities, records and resources with Debtor and the other
18 Defendants (§§ 114, 117-21, 122)
19 j. It did not deal with Debtor and other Defendants at arms-length (§§ 125-26,
20 129-30, 135-36)
21 k. There were inappropriate and insufficiently documented intercompany
22 transfers of funds and other assets between it and Debtor and the other
23 Defendants (§§ 137-40, 141, 142, 150-52, 161-65).

24
25 286. With respect to the Owner Defendants, in addition to the allegations set forth
26 above, and in addition to exercising control over the Debtor and the Affiliated Defendants for
27 their own benefit, and to the detriment of Debtor, substantive consolidation with the Debtor's
28 estate is appropriate because:

- a. They own Debtor and all the Affiliated Defendants (§§ 24-28, 35)
- b. They manage Debtor and the Affiliated Defendants (§§ 34, 35, 36, 37, 39-42)
- c. Salyer controls them, and they control Debtor and the Affiliated Defendants (§§ 34, 40-42)
- d. Together with Debtor and the Affiliated Defendants, they operate a single enterprise (§§ 43-44, 46, 54-61, 62)
- e. They have little if any operations independent of their relationship with Debtor and the Affiliated Defendants (§§ 65, 73, 83)
- f. They were never capitalized or operated for profit (§§ 74, 85-86)
- g. They did not adhere to corporate formalities (§§ 87-88, 93-94, 138)
- h. They share management and administration with Debtor and the Affiliated Defendants (§§ 95-96, 98, 101, 103. 104, 107-08, 110-13)
- i. They share facilities, records and resources with Debtor and the Affiliated Defendants (§§ 115, 117-21, 122, 124)
- j. They did not deal with Debtor and the Affiliated Defendants at arms-length, and did not permit Debtor and the Affiliated Defendants to deal with each other at arms-length (§§ 125-26, 129-30, 135-36)
- k. There were inappropriate and insufficiently documented intercompany transfers of funds and other assets between them and Debtor, other Owner Defendants and the Affiliated Defendants (§§ 137-40, 142, 143, 149, 150-52, 161-65).

287. The Debtor, through the Owner Defendants, exercised complete dominion and control over the Affiliated Defendants, commingled the Debtor's assets with the assets of the Defendants, transferred property from the Debtor to the Defendants, from the Defendants to the Debtor, and among the Defendants, and otherwise treated the Defendants' property as if it were the Debtor's, such that there is a substantial identity between and among the Debtor and the Defendants and the Defendants are mere instrumentalities of the Debtor.

1 288. Because of the intermingling of the assets, liabilities and finances of the Debtor,
2 the Owner Defendants, and the Affiliated Defendants, an accurate identification and allocation of
3 assets is not realistically possible absent an expenditure of time and expense that would threaten
4 the realization of any net assets for all the creditors of the Debtor, Owner Defendants, and
5 Affiliated Defendants.

6 289. The Debtor's use, dominion and control over the Affiliated Defendants was
7 improper, inequitable, and contrary to the law and public policy of the State of California.

8 290. Substantive consolidation should be granted *nunc pro tunc*, as of the date of the
9 filing of the Petitions on May 5, 2009.

10 Wherefore, the Trustee prays for judgment as set forth below.

11 ***Count V: Declaratory Relief Against All Defendants That The Defendants***
12 ***Are the Alter Egos of the Debtor Under Applicable State Law***

13 291. The Trustee hereby incorporates each of the foregoing paragraphs of the
14 Complaint as though set forth fully herein.

15 292. The Trustee is informed and believes and thereon alleges that the Debtor
16 exercised complete dominion and control over the Defendants, disregarded the separate
17 ownership of the Defendants, and used the assets of the Defendants as if they were those of the
18 Debtor, and *vice versa*.

19 293. The Defendants in truth and in fact are a device, mere artifice, and veil used to
20 conceal the Debtor's true interest in and dominion and control over the Defendants and their
21 assets.

22 294. The Debtor and the Defendants failed to maintain adequate corporate records for
23 themselves and for the Defendants and confused the records of the Defendants. In particular, the
24 Debtor and Defendants failed to maintain adequate corporate records concerning intercompany
25 transfers, prepaid expenses, asset purchases and transfers, and purported assignments of rights.

26 295. As to SK Foods, there are minimal minutes and resolutions, and they pertain
27 primarily to changes in officers and managers of the partnership. SK Foods failed to follow
28 corporate or partnership formalities and properly document the transfer of millions of dollars.

1 296. The Debtor and the Defendants occupied the same offices and business locations
2 and employed and utilized the same management team and employees.

3 297. The Debtor used the Defendants as a mere shell, instrumentality and conduit for a
4 single business venture.

5 298. The Debtor and the Defendants have a unity of interest and ownership such that
6 there is no separateness to their existence, and recognition of the separate existence of the Debtor
7 and the Defendants from the Debtor would result in a fraud, an inequitable result, or injustice to
8 the Debtor's creditors.

9 Wherefore, the Trustee prays for a judgment as set forth below.

10 **Count VI: Recovery of Fraudulent Conveyances Against The Owner Defendants**

11 299. The Trustee hereby incorporates each of the preceding paragraphs of the
12 Complaint as though set forth fully herein.

13 300. The Trustee is informed and believes and thereon alleges that the Debtor provided
14 all or substantially all of the funds for the initial capitalization of the Affiliated Defendants and
15 acquisition of the Foreign Entities.

16 301. The Trustee is informed and believes and thereon alleges that the Owner
17 Defendants claim ownership (the "Equity Interests") of the Affiliated Defendants and the
18 Foreign Entities.

19 302. The Debtor transferred the Equity Interests in the Affiliated Defendants and
20 Foreign Entities to the Owner Defendants with actual intent to hinder, delay or defraud creditors
21 of the Debtor.

22 303. The Debtor received less than reasonably equivalent value from the Owner
23 Defendants in exchange for the transfer of the Equity Interests and (i) was insolvent on the date
24 the transfers was made or became insolvent as a result of the transfer; or (ii) was engaged in
25 business or was about to engage in business for which its remaining property was unreasonably
26 small, or (iii) intended to incur, or believed the Debtor would incur debts that would be beyond
27 its ability to pay.
28

304. The Trustee is entitled to recover the Equity Interests in the Affiliated Defendants and Foreign Entities or the value thereof for the benefit of the estate pursuant to 11 U.S.C. §§ 548(a) and 550(a).

Wherefore, the Trustee prays for a judgment as set forth below.

Count VII: Turnover Of Property Pursuant To 11 U.S.C. §§ 521(A)(4) And 542(A)

305. The Trustee hereby incorporates each of the preceding paragraphs of the Complaint as though set forth fully herein.

306. The Ownership Defendants and Affiliated Defendants and all their assets are property of the Debtor's bankruptcy estate within the meaning of 11 U.S.C. §541(a). The Owner Defendants are required to turn over to the Trustee all the Affiliated Defendants and Foreign Entities and their assets pursuant to 11 U.S.C. §§521(a)(4) and 542(a).

Wherefore, the Trustee prays for a judgment as set forth below.

Prayer For Relief

WHEREFORE, the Trustee prays for judgment as follows:

1. On the First Claim for Relief, for judgment avoiding and preserving for the benefit of the Estate the Transfers dated May 5, 2008 to the present and for judgment against Defendants in an amount equal to the value of those Transfers together with prejudgment and post-judgment interest thereon at the legal rate allowed under 28 U.S.C. §1961 from the date of the Transfers.

2. On the Second Claim for Relief, for judgment avoiding and preserving for the benefit of the Estate the Transfers and for judgment against Defendants in an amount equal to the value of the Transfers together with prejudgment and post-judgment interest thereon at the legal rate allowed under 28 U.S.C. §1961 from the date of the Transfers.

3. On the Third Claim for Relief, for judgment avoiding and preserving for the benefit of the Estate the Transfers and for judgment against Defendants in an amount equal to the value of the Transfers together with prejudgment and post-judgment interest thereon at the legal rate allowed under 28 U.S.C. §1961 from the date of the Transfers

1 4. On the Fourth Claim for Relief, for judgment substantively consolidating the
2 Debtor's estate, the Owner Defendants, and the Affiliated Defendants *nunc pro tunc* as of May 5,
3 2009, and

4 (a) determining that all of the Owner Defendants, the Affiliated Defendants and
5 their assets constitute property of the consolidated bankruptcy estate;

6 (b) quieting title to all Owner Defendants' and Affiliated Defendants' assets in
7 favor of the Trustee;

8 (c) determining that any transfers of property by the Owner Defendants and
9 Affiliated Defendants constitute transfers of property of the Debtor's bankruptcy estate for
10 purposes of any action under Part V of Title 11 of the United States Code, or any provision
11 of non-bankruptcy law authorizing the recovery of transferred property;

12 (d) determining that the Trustee has sole authority to liquidate any Owner
13 Defendant, Affiliated Defendant and its assets for the benefit of the consolidated bankruptcy
14 estate; and

15 (e) determining that the Trustee has sole authority to recover any property
16 transferred by the Owner Defendants and Affiliated Defendants for the benefit of the
17 consolidated bankruptcy estate.
18

19 5. On the Fifth Claim for Relief, for judgment determining that the Debtor and
20 Defendants are alter egos of each other, and that the existence of the Defendants separate and
21 apart from that of the Debtor should be disregarded.

22 6. On the Sixth Claim for Relief, for judgment avoiding and preserving for the
23 benefit of the Debtor's estate the Equity Interests in the Affiliated Defendants and Foreign
24 Entities, or the value thereof.
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26
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28

1 7. On the Seventh Claim for Relief, for judgment compelling the Owner Defendants
2 to turn over all Equity Interests in the Affiliated Defendants and Foreign Entities to the Trustee.

3 8. For costs of suit incurred herein; and

4 9. For such other and further relief the Court deems just and proper.

5
6 Dated: January 11, 2010

SCHNADER HARRISON SEGAL & LEWIS LLP

7
8 /s/ Gregory C. Nuti

Gregory C. Nuti

9 Attorneys for Plaintiff Bradley D. Sharp,

10 Chapter 11 Trustee
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EXHIBIT A

DEFENDANT NAME	Debit transactions		Credit transactions		Net amount
	Amount	Count	Amount	Count	
BLACKSTONE RANCH CORPORATION	\$ 1,199,209	47	\$ (7,717,509)	99	\$ (6,518,300)
MONTEREY PENINSULA FARMS, LLC			No direct transactions		
SALYER MANAGEMENT COMPANY, LLC	\$ -	0	\$ (269,221)	3	\$ (269,221)
SCOTT SALLYER REVOCABLE TRUST	\$ 4,813,242	5	\$ (17,691,102)	66	\$ (12,877,861)
SCOTT SALLYER AS TRUSTEE FOR THE SCOTT SALLYER REVOCABLE TRUST			No direct transactions		
SK FARMS SERVICES, LLC	\$ -	0	\$ (6,000,000)	1	\$ (6,000,000)
SK FOODS LLC	\$ 28,158,608	25	\$ (28,245,863)	57	\$ (87,255)
SK FOODS CANNING, LLC			No direct transactions		
SK FROZEN FOODS	\$ 51,628	1	\$ (1,150,213)	10	\$ (1,098,585)
SKPM CORP.	\$ 6,884,254	16	\$ (19,138,094)	167	\$ (12,253,840)
SS FARMS, LLC	\$ 158,221,966	193	\$ (336,370,852)	712	\$ (178,148,885)
SSC FARMING, LLC	\$ 18,933,735	36	\$ (13,692,674)	70	\$ 5,241,061
SSC FARMING I, LLC / SSC Farms I	\$ 210,000	1	\$ (982,652)	11	\$ (772,652)
SSC FARMING II, LLC / SSC Farms II	\$ 280,000	1	\$ (2,981,591)	17	\$ (2,701,591)
SSC FARMING III, LLC / SSC FARMS III	\$ -	0	\$ (319,115)	2	\$ (319,115)
GRAND TOTALS	\$ 218,752,642	325	\$ (434,558,887)	1,215	\$ (215,806,244)

Note:
Above represents general ledger transactions recorded by SK Foods relating to related parties and not necessarily reflective of cash activity.